



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2020-0005; FRL-7611-02-OW]

Final National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges From the Application of Pesticides; Reissuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit issuance.

SUMMARY: This notice announces issuance by all 10 Environmental Protection Agency (EPA) Regions of the final 2021 National Pollutant Discharge Elimination System (NPDES) pesticide general permit (PGP) – the 2021 PGP. The 2021 PGP, which has an effective date of October 31, 2021, replaces the existing permit (2016 PGP) that expires at midnight on October 31, 2021, and authorizes certain point source discharges from the application of pesticides to waters of the United States in accordance with the terms and conditions described therein. EPA is issuing this permit for five (5) years in all areas of the country where EPA is the NPDES permitting authority.

DATES: The permit becomes effective on October 31, 2021, and will expire at midnight, October 31, 2026. In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on **[insert date 14 days after date of publication in the Federal Register]**. Under section 509(b) of the Clean Water Act (CWA), judicial review of this general permit can be requested by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued. Under section 509(b) of the CWA, the requirements of this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of a Notices of Intent (NOI) to be covered, if required, are provided in Part 1.2.3, Table 1-2 of the 2021 PGP.

FOR FURTHER INFORMATION CONTACT: For further information on the final permit, contact the appropriate EPA Regional office listed in Section I.D of this document, email PGP@epa.gov, or contact Chelsea Durant, EPA Headquarters, Office of Water, Office of Wastewater Management (4203M), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202-564-2290; email address: durant.chelsea@epa.gov. Electronic versions of the 2021 PGP and Fact Sheet are also available on EPA’s NPDES website at <https://www.epa.gov/npdes/pesticide-permitting>.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

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I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you apply pesticides, under the use patterns in Part 1.1.1. of the 2021 PGP, that result in a discharge to waters of the United States in one of the geographic areas identified in Appendix C of the 2021 PGP. Potentially affected entities, as categorized in the North American Industry Classification System (NAICS), may include, but are not limited to:

Table 1. - Entities Potentially Regulated by the 2021 PGP		
Category	NAICS	Examples of Potentially Affected Entities

Agricultural entities— General agricultural interests, farmers/producers, forestry, and irrigation.	111 Crop Production	Producers of crops mainly for food and fiber, including farms, orchards, groves, greenhouses, and nurseries that have irrigation ditches requiring pest control.
	113110 Timber Tract Operations	The operation of timber tracts for the purpose of selling standing timber.
	113210 Forest Nurseries Gathering of Forest Products	Growing trees for reforestation and/or gathering forest products, such as gums, barks, balsam needles, rhizomes, fibers, Spanish moss, ginseng, and truffles.
Pesticide parties (includes pesticide manufacturers, other pesticide users/interests, and consultants).	221310 Water Supply for Irrigation	Operating irrigation systems.
	325320 Pesticide and Other Agricultural Chemical Manufacturing.	Formulation and preparation of agricultural pest control chemicals.
Public health parties (includes mosquito or other vector control districts and commercial applicators that service these).	923120 Administration of Public Health Programs	Government establishments primarily engaged in the planning, administration, and coordination of public health programs and services, including environmental health activities.
Resource management parties (includes State departments of fish and wildlife, State departments of pesticide regulation, State environmental agencies, and universities).	924110 Administration of Air and Water Resource and Solid Waste Management Programs	Government establishments primarily engaged in the administration, regulation, and enforcement of air and water resource programs; the administration and regulation of water and air pollution control and prevention programs; the administration and regulation of flood control programs; the administration and regulation of drainage development and water resource consumption programs; and coordination of these activities at intergovernmental levels.
	924120 Administration of Conservation Programs	Government establishments primarily engaged in the administration, regulation, supervision and control of land use, including recreational areas; conservation and preservation of natural resources; erosion control; geological survey program administration; weather forecasting program administration; and the administration and protection of publicly and privately owned forest lands. Government establishments responsible for planning, management, regulation and conservation of game, fish, and wildlife populations, including wildlife management areas and field stations; and other administrative matters relating to the protection of fish, game, and wildlife are included in this industry.

Utility parties (includes utilities)	221 Utilities	Provide electric power, natural gas, steam supply, water supply, and sewage removal through a permanent infrastructure of lines, mains, and pipes.
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B. How Can I Get Copies of This Document and Other Related Information?

Docket. EPA has established a docket for this action under Docket ID No. **EPA-HQ-OW-2020-0005; FRL-7611-02-OW**]. Although all documents in the docket are listed in an index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through www.regulations.gov. Out of an abundance of caution for members of the public and EPA staff, the EPA Docket Center and Reading Room are currently closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. When the EPA Docket Center and Reading Room reopen, publicly available docket materials will be available in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

C. Geographic Coverage

EPA provides permit coverage for classes of point source discharges of pollutants that occur in areas where EPA is the NPDES permitting authority. The geographic coverage of the 2021 PGP is listed in Appendix C of the permit.

D. Who are the EPA Regional Contacts for This Final Permit?

For EPA Region 1, contact George Papadopoulos at tel.: (617) 918-1579; or e-mail at papadopoulos.george@epa.gov.

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637-3856; or e-mail at venezia.stephen@epa.gov. For Puerto Rico, contact Sergio Bosques at tel.: (787) 977-5838 or bosques.sergio@epa.gov.

For EPA Region 3, contact Carissa Moncavage at tel.: (215) 814-5798; or e-mail at moncavage.carissa@epa.gov.

For EPA Region 4, contact Sam Sampath at tel.: (404) 562-9229; or e-mail at sampath.sam@epa.gov.

For EPA Region 5, contact John Colletti at tel.: (312) 886-6106; or e-mail at colletti.john@epa.gov.

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For EPA Region 7, contact Alex Owutaka at tel.: (913) 551-7584 or e-mail at: owutaka.alex@epa.gov.

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For EPA Region 9, contact Eugene Bromley at tel.: (415)-972-3510 or e-mail at: bromley.eugene@epa.gov.

For EPA Region 10, contact Bilin Basu at tel.: (206) 553-0029 or e-mail at: basu.bilin@epa.gov.

II. Background

Section 301(a) of the CWA provides that “the discharge of any pollutant by any person shall be unlawful” unless the discharge is in compliance with certain other Sections of the Act. 33 U.S.C. 1311(a). The CWA defines “discharge of a pollutant” as “(A) any addition of any pollutant to navigable waters from any point source and (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” 33 U.S.C. 1362(12). A “point source” is any “discernible, confined and discrete conveyance” but does not include “agricultural stormwater discharges and return flows from

irrigated agriculture.” 33 U.S.C. 1362(14).

The term “pollutant” includes among other things “garbage... chemical wastes, biological materials ...and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. 1362(6).

A person may discharge a pollutant without violating the Section 301 prohibition by obtaining authorization to discharge (referred to herein as “coverage”) under a Section 402 NPDES permit (33 U.S.C. 1342). Under Section 402(a), EPA may “issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding Section 1311(a)” upon certain conditions required by the Act.

EPA issued the first Pesticide General Permit (“2011 PGP”) on October 31, 2011, in response to the United States Sixth Circuit Court of Appeals ruling vacating EPA’s 2006 Final Rule on Aquatic Pesticides. *National Cotton Council of America. v. EPA*, 553 F.3d 927 (6th Cir. 2009). EPA developed the PGP to control point source discharges of biological pesticides and chemical pesticides that leave a residue into waters of the United States. In 2016, EPA issued the second PGP (2016 PGP). EPA is issuing the 2021 PGP to replace the 2016 PGP which expires at midnight on October 31, 2021. Similar to the 2011 PGP and 2016 PGP, the 2021 PGP provides coverage for certain point source discharges of pollutants to waters of the United States in areas where EPA is the NPDES permitting authority.

EPA published the draft 2021 PGP and accompanying Fact Sheet in the Federal Register on January 15, 2021 (86 FR 4070), soliciting comments on the draft permit. EPA also conducted formal consultation with Indian Tribal Governments. EPA received 8 written comment letters on the draft permit. EPA considered all comments received during the comment period in preparing the final permit. EPA responded to all significant comments in the Response to Comment Document which is available as part of the docket for this permit.

III. Summary of the 2021 PGP

A. Summary of Updates to the 2016 PGP and From the Proposed 2021 PGP

While the requirements of the 2021 PGP remain the same as those in the 2016 PGP, some minor updates have been added and are discussed in more detail in the 2021 PGP Fact Sheet. The draft 2021 PGP was proposed on January 15, 2021 and EPA proposed keeping the same conditions and requirements as the 2016 PGP as well as the following changes:

- Removed the out of date NOI provision that provided automatic coverage for all Operators until January 12, 2017.
- Replaced the requirement to use the EPA's eNOI system with EPA's NPDES eReporting Tool (NeT) when preparing and submitting NOIs, NOTs, and annual reports.
- Updated Appendix A, Definitions, Abbreviations, and Acronyms, to include the terms "Pesticide discharges to waters of the United States from pesticide application" and "pesticide residue," as defined in 40 CFR 122.2.
- Modified Appendix B, Standard Permit Conditions, to ensure consistency with 40 CFR 122.41.
- Updated Appendix C, Areas Covered, to reflect coverage changes by removing the State of Idaho, and added Indian Country within Virginia and Indiana.

In response to the public comments received and the Endangered Species Act Section 7 consultation, below is a summary of changes to the draft 2021 PGP and discussed in more detail in the 2021 PGP Fact Sheet.:

- Clarified Part 1.1.2.4 of the PGP by changing the phrase "not likely to adversely affect" and clarified the supporting documentation to be submitted with the Notice of Intent for the eligibility criterion selected. Appendix D, Notice of Intent form, and Appendix I, Endangered Species Procedures, are also updated to reflect changes made in Part 1.1.2.4 of the permit.
- Corrected Part 1.2.3 of the PGP by adding back the statement that Decision-makers may submit multiple NOIs with different activities.
- Clarified Part 1.6 of the PGP by adding the term "as a result of a separate federal action."
- Updated Part 2.2.3.b of the PGP to add cultural methods to the list of management options

Decision-maker must evaluate when developing Pest Management Measures for animal pest control.

- Updated Part 9.0 of the PGP to reflect state and tribal Clean Water Act Section 401 certifications.
- Updated Definitions, Abbreviations, and Acronyms, Appendix A of the PGP to:
 - correct the effective date in the definition for the Decision-maker who is or will be required to submit an NOI.
 - update the definition for the National Marine Fisheries Service (NMFS) Listed Resources of Concern to include the 2021 biological opinion.
 - add the definition for “Take”.
 - add missing acronyms.
- Updated Appendix C of the PGP, Areas Covered, to remove tribes who denied coverage under the permit, and to remove Texas’ oil and gas activities.
- Corrected Appendix F of the PGP, Pesticide Discharge Evaluation Worksheet, by adding an introduction to the coversheet and updating the instructions to point Operators to Part 7.3 of the PGP.
- Updated Appendix I of the PGP, Endangered Species Procedures, to include list of pesticides that a NMFS’ biological opinion has determined the labeled use would jeopardize the continued existence of ESA-listed species and/or adversely modify designated critical habitat.

B. Summary of 2021 PGP Terms and Requirements

The 2021 PGP is similar to the 2016 PGP, and is structured in the same nine parts: (1) Coverage under This Permit, (2) Technology-Based Effluent Limitations, (3) Water Quality-Based Effluent Limitations, (4) Monitoring, (5) Pesticide Discharge Management Plan, (6) Corrective Action, (7) Recordkeeping and Annual Reporting, (8) EPA Contact Information and Mailing Addresses, and (9) Permit Conditions Applicable to Specific States (including

Territories) and Indian Country. Additionally, as with the 2016 PGP, the 2021 PGP includes nine appendices with additional conditions and guidance for permittees: (A) Definitions, Abbreviations, and Acronyms, (B) Standard Permit Conditions, (C) Areas Covered, (D) Notice of Intent (NOI) form, (E) Notice of Termination (NOT) form, (F) Pesticide Discharge Evaluation Worksheet (PDEW), (G) Annual Reporting Template, (H) Adverse Incident Report Template, and (I) Endangered Species Procedures. A summary of the 2021 PGP's requirements are provided in the 2021 PGP Fact Sheet.

C. 2021 PGP Cost Analysis and Future Cost-Benefit Considerations

The cost analysis accompanying this final permit monetizes and quantifies certain incremental cost impacts of the final permit changes as compared to the 2016 PGP. EPA analyzed each change in the 2021 PGP considering the previous permit's requirements. The objective of the cost analysis is to show where or to what extent the 2021 PGP requirements impose an incremental increase in administrative and compliance costs (such as sampling and monitoring costs) on Operators in relation to costs that are already accounted for in the 2016 PGP. EPA expects no incremental cost impact on entities that will be covered under the 2021 PGP, including small businesses, since the requirements in the permit are substantively the same as those found in both the 2016 PGP as well as the 2011 PGP. For further discussion, see Appendix D of the fact sheet.

More broadly, EPA notes that additional unquantified costs and benefits result from this action. In developing the next PGP (or another NPDES general permit, as appropriate), EPA plans to estimate the broader impacts arising from these actions, including costs and benefits. Estimates under consideration may include: (1) assessing how costs and benefits are attributed between the PGP and applicable water quality standards (including TMDLs) that may be in effect; (2) developing a new modeling framework to assess how regulated entities understand and implement control measures relating to existing and new permit obligations; (3) examining whether any underlying cost and benefit assumptions need to be updated; (4) examining more

broadly how EPA can analyze benefits when developing permits; (5) developing more robust approaches to assessing uncertainties associated with the analytic approaches, including how to quantitatively assess uncertainties of key assumptions; and (6) developing a framework to analyze the effort of cooperative federalism.

IV. Executive Orders 12866 and 13563

The 2021 PGP is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

V. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA believes that the 2021 PGP will not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples because the requirements in the permit apply equally to all pesticide applicators in areas where EPA is the permitting authority. The provisions in the general permit increase the level of environmental protection for all affected populations.

VI. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in E.O. 13175. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. EPA directly implements the NPDES Program, including the 2021 PGP when it is finalized, in Indian country; therefore, in compliance with EPA Policy on Consultation and

Coordination with Indian Tribes, EPA consulted with tribal officials early in the process to allow tribes to have meaningful and timely input into the renewal of the PGP. In the course of this consultation, EPA undertook the following activities:

- May 8, 2020 – EPA emailed notification letters to tribal leaders initiating consultation and coordination on the renewal of the PGP.
- June 9, 2020 – EPA held an informational webinar open to all tribal representatives and reserved the last part of the teleconference for official consultation comments. No official comments were received during the webinar.

EPA did not receive any comments during the formal tribal consultation period. EPA notes that as part of the finalization of this permit, the agency completed Section 401 certification procedures with all applicable tribes where this permit will apply (see Part 9 and Appendix C of the PGP).

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: September 8, 2021.

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Dated: September 8, 2021.

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Dated: September 8, 2021.

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